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2000 NOV 16 A 10:59
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DA 00-2491

Released: November 7, 2000

IMPLEMENTATION OF REVISED RULES GOVERNING FOREIGN CARRIER AFFILIATIONS

IB DOCKET No. 97-142

On September 19, 2000, the Commission released its *Order on Reconsideration* in IB Docket No. 97-142, *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, FCC 00-339. In this Order, the Commission affirmed the pro-competitive rules and policies regarding foreign participation in the U.S. telecommunications market and streamlined the foreign carrier notification of affiliation requirement in § 63.11. The rules adopted in this Order become effective on November 9, 2000. The Telecommunications Division of the International Bureau provides this briefing sheet to remind U.S. international carriers and applicants of the effective date of the rules and their new obligations under these rules.

- Under the *previous* version of § 63.11, an authorized international section 214 holder must notify the Commission 60 days **prior** to the consummation of an investment resulting in a foreign carrier affiliation if:
 - (1) the authorized carrier, or certain holding companies of the authorized carrier, acquires a *controlling* interest in a foreign carrier, or
 - (2) a foreign carrier, or entity that controls a foreign carrier, acquires either a *controlling or greater than 25% interest* in the authorized carrier.

With respect to all other investments, our rules required authorized carriers to submit post notifications of affiliations within 30 days of acquiring an affiliation.

- Now under the *new* rule, there are three types of foreign carrier affiliations that would have normally been subject to prior notification under the previous rule that are now subject to post notification. Specifically, **no prior notification** is required if an authorized section 214 holder acquires an affiliation that would have been subject to prior notification as detailed above, but the foreign carrier involved is:
 - (1) a foreign carrier that we have previously determined in an adjudication lacks market power;
 - (2) solely a resale carrier; or
 - (3) from a WTO Member and the carrier can demonstrate that it qualifies for non-dominant treatment under § 63.10 or, in the alternative, agrees to comply with the dominant carrier safeguards in § 63.10.

In the event a foreign carrier affiliation is now subject to one of these exceptions to the prior notification requirement, the authorized carrier **must now file a post notification** of affiliation pursuant to new § 63.11(c). The authorized carrier must also submit a certification with the Commission as part of its notification indicating upon which exception it is relying and certifying as to the factual basis for the qualification.

- Under the new rule, the period for prior notification has also changed. Instead of filing prior notifications of affiliation 60 days in advance of the consummation of the transaction, an authorized carrier must now file the prior notifications **45 days** in advance.
- An authorized carrier filing prior notifications of affiliation may also request that, for the initial 20 days of the 45 day period, the notification be treated confidentially. After the initial 20 days, the Commission's staff will no longer afford the notification confidentiality and will accordingly place the foreign carrier notification on public notice for comment.
- All authorized carriers that acquire a foreign carrier affiliation that is not subject to the prior notification requirement must still file a post notification of the affiliation.
- All carriers filing notifications under the rule, whether the notifications are prior or post, must now **indicate in the text of the notification whether the notification is a prior or post notification**. In the case of prior notifications, carriers must also include the projected closing date of the transaction. In the case of post notifications, carriers must include the actual closing date.
- In circumstances where both a notification of foreign carrier affiliation and an application for assignment or transfer of control will be filed with the Commission, carriers are now required to **cross-reference** these filings. We emphasize that separate filings are still required.
- If an authorized section 214 holder is acquiring an affiliation with a foreign carrier from a **non-WTO Member** country and the affiliation is subject to prior notification, then the authorized carrier must demonstrate that the foreign carrier lacks market power in the non-WTO Member country or make the Effective Competitive Opportunities (ECO) showing as required in § 63.18(k)(3).

We encourage carriers to file electronically, and the electronic form for filing a Foreign Carrier Affiliation (FCN) through the International Bureau's Electronic Filing System (IBFS) is being revised to reflect the changes in § 63.11. We anticipate that the revised FCN form will be available for use shortly. We will place an announcement on our web site once the revised form is available for use. Until such time, carriers will be required to file manually.

For additional information, please contact Lisa Choi, Telecommunications Division, International Bureau (202) 418-1460. For further information concerning IBFS, contact IBFSINFO@fcc.gov or by phone at (202) 418-2222.

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